

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

POLYONE CORPORATION,)	CASE NO. 1:13 CV 2717
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	
JOSEPH KUTKA, <i>et al.</i> ,)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER OF PRELIMINARY</u>
)	<u>INJUNCTION</u>
Defendants.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge William H. Baughman, Jr. The Report and Recommendation (ECF # 90), submitted on October 31, 2014, recommends that Plaintiff's Motion for a Preliminary Injunction (ECF #21) be granted in part as agreed to by Defendant Kutka except for the demand that Mr. Kutka be enjoined from continuing his employment at PolyMax. Magistrate Judge Baughman found that Plaintiff did not establish a strong case with clear and convincing evidence that it will be irreparably damaged without an injunction preventing Mr. Kutka from continuing his employment at PolyMax as vice president of operations.

Plaintiff has filed an objection to the Report and Recommendation asking this Court to enter a preliminary injunction enjoining Mr. Kutka from working for or otherwise providing services on behalf of PolyMax until trial and a ruling on Plaintiff's motion for a permanent injunction. Plaintiff asserts that the Magistrate Judge's decision is based upon his acceptance of Mr. Kutka's representations that he has returned all PolyOne information and that he will abide by his obligations not to disclose, use or keep PolyOne confidential

and trade secret information in his employment with PolyMax. Plaintiff contends that Mr. Kutka's word cannot be trusted.

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable district court standard of review for a magistrate's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides this standard of review. It states, in pertinent part, the following:

The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Accordingly, this Court will review the Report and Recommendation, to which timely objections have been filed, *de novo*. See *Dacas Nursing Support Sys., Inc. v. NLRB*, 7 F.3d 511 (6th Cir. 1993).

Conclusion

The Court has reviewed the Report and Recommendation of Magistrate Judge Baughman *de novo*. See *Massey v. City of Ferndale*, 7 F.3d 506 (6th Cir. 1993). The Court has also considered all of the pleadings, affidavits, motions, and filings of the parties. After careful evaluation of the record, the Report and Recommendation, and the objections filed by Plaintiff, this Court finds the Report and Recommendation issued by Magistrate Judge Baughman to be well supported and correct.

Accordingly, the Court hereby ADOPTS the Report and Recommendation issued

by Magistrate Judge Baughman and grants Plaintiff's Motion for a Preliminary Injunction with some modifications as follows:

1. Mr. Kutka is enjoined from using or disclosing any of PolyOne's confidential or proprietary trade secrets, or information obtained in violation of the Computer Fraud and Abuse Act;

2. Mr. Kutka is compelled to perform all the covenants in the non-compete agreement;

3. Mr. Kutka is to "preserve and return to PolyOne any and all property of PolyOne;"

4. Mr. Kutka will not contact any PolyOne customer or potential customer until after the trial in this action has been completed; and

5. Mr. Kutka will remain in his present role as vice president of operations—and not assume a sales or product development role—until the trial in this matter has been completed.¹

A trial in this matter is set for January 5, 2015 at 8:30 a.m.

IT IS SO ORDERED.


DONALD C. NUGENT
United States District Judge

DATED: November 24, 2014

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While Mr. Kutka represented to Magistrate Judge Baughman that he would not contact any PolyOne Customer (or potential customers) and would remain in his present role as vice president of operations of PolyMax—and not assume a sales or product development role—until December, 2014. However, as this action will remain pending beyond the stated completion of the non-compete agreement, Mr. Kutka's obligations under the agreement will be extended until this action is complete.